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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1137 OF 2003

Rajaram Shankar Ghodake ... Appellant (Ori.Accused)

V/s

The State of Maharashtra ... Respondent

Mr. D.W. Bhosale for the appellant.

Mr. P.A. Pol, A.P.P. for the respondent State.

CORAM: D. G. DESHPANDE & SMT. NISHITA MHATRE, JJ.

DATED: 5TH JUNE, 2007.

ORAL JUDGMENT (PER SMT. MHATRE, J.):

1. The accused has preferred this appeal against the judgment and order of the III Additional Sessions Judge, Pandharpur. The accused has been convicted under Section 302 of the Indian Penal Code and sentenced to suffer life imprisonment and payment of fine of Rs.300/-.

2. The case of the prosecution is that the accused and the victim were married for 10 years. They had two children, a girl and a boy. The accused was addicted to liquor and often beat his wife. On 18.6.2002 at about

6.00 pm. the victim, Suvarna tried to impress upon the accused to refrain from imbibing liquor. Enraged by this, the accused set the victim Suvarna on fire. Seeing his mother ablaze, her 5 year old son, Nagnath clutched her, as a result of which he also suffered burn injuries. According to the prosecution, the accused, his brothers and some villagers admitted Suvarna and Nagnath to the Civil Hospital at Solapur at about 1.00 a.m. on 19.6.2002. Suvarna's statement was recorded, both by the A.S.I. on duty and the Executive Magistrate. Suvarna succumbed to her injuries on 20.6.2002 at about 11.00 p.m. Nagnath met with the same fate on 21.6.2002 in the early hours of the morning. The accused was arrested on 22.6.2002. He was charged with offences punishable under Section 302 of the Indian Penal Code for having murdered Suvarna and under Section 304 Part II for causing the death of Nagnath. He was tried by the Sessions Court, Pandharpur and convicted as aforesaid.

3. The prosecution has relied on the testimony of 10 witnesses in support of its case, besides the two dying declarations. The first dying declaration which was recorded by PW-6 the A.S.I. on duty is at Exh.23. The second dying declaration was recorded by the Executive Magistrate who is examined as PW-7. This statement is

at Exh.26. We have perused both these statements and find that they are consistent. In both the statements, the victim has disclosed that she had tried to impress upon her husband not to imbibe alcoholic drinks. This advice enraged him and he doused her with kerosene and set her on fire with a lighted matchstick. She has also revealed in her statements that when her clothes were ablaze, her 5 year old son came rushing to her and clutched her, due to which he also suffered burns. The victim has further stated that the accused admitted her son and herself to the Civil Hospital. On perusal of both the statements at Exh.23 and 26, we find that the statements are genuine and the attempt made by the accused before the Trial Court to discredit these statements is futile. The Trial Court has thus rightly accepted the dying declarations. The fact that the victim has disclosed that the accused admitted her and her son to the hospital indicates that her version is genuine and was not at the behest of her parents who were examined as PW-3 and PW-8. Both PW-3 and PW-8, the mother and the father, respectively, of the victim have deposed that although their daughter Suvarna was married to the accused 10 years prior to the incident, she used to complain about the behaviour of the accused when she occasionally visited them. She had disclosed to them that the accused used to beat her often under the

influence of liquor. Four days prior to the incident, the victim had visited them and had mentioned that the accused continued with his boorish conduct of beating her when he imbibed alcohol. She also told them that she often tried to pursuade him to refrain from consuming alcohol. Both PW-3 and PW-8 had at that point of time advised the victim to reside with them but she returned to her matrimonial home because her children were not with her. PW-3 and PW-8 were informed of the injuries suffered by Suvarna when the brother of the accused informed them at about 6.00 am. on 20.6.2002. They reached the Solapur Civil Hospital at about 10.00 am. Both PW-3 and PW-8 have testified that Suvarna spoke to them about the manner in which she and her son Nagnath sustained the burn injuries. PW-3 and PW-8 have corroborated each other and there is no reason to disbelieve their evidence. There is nothing in the cross-examination of either of these witnesses to discredit their testimony.

4. PW-4, a cousin of the victim and PW-5 who is a maternal aunt of the victim, have also corroborated the testimony of PW-3 and PW-8.

5. PW-2 has been examined as the panch witness. He has claimed to be the leader of the village. He has proved

the spot panchanama. In his cross-examination, he has stated that he was one of the 8 to 10 persons who had accompanied the accused when he admitted Suvarna and Nagnath to hospital. According to this witness, the parents of the deceased Suvarna were insisting that she should involve the accused in the incident. He has also claimed that when the A.S.I. PW-6 recorded Suvarna's statement, her parents had dictated the statement to him. He also claimed that a kerosene lamp which was partially burnt was found at the scene of offence and was seized by the police except so far as it proves the panchanama. It is difficult to rely upon the testimony of this witness except so far as it proves the panchanama. The panchanama discloses that four articles were seized from the scene of offence which are, a plastic can without a lid, containing approximately one litre of kerosene, pieces of glass bangles, burnt pieces of cloth and one half burnt match-box containing some used matchsticks. There is nothing on record to indicate that the kerosene lamp which was partially burnt was found at the scene of offence. The Investigating Officer who has been examined as PW-9 has not been cross-examined on this issue. Therefore, it is difficult to accept the statement of this witness. Apart from this, PW-2 has stated that Suvarna's parents were dictating her statement to the PW-6. This cannot

be believed since the statement was recorded at about 1.00 am. on 20.6.2002. Both, PW-3 and PW-8 have stated in their depositions that they reached the hospital on 20.6.2002 at about 10.00 am. after they were informed of the incident at 6.00 am. on that very day. The evidence of the PW-2 can be accepted only to the extent that it proves the spot panchanama.

6. PW-10 is the doctor who attended to Suvarna and Nagnath when they were admitted to hospital. He has endorsed the dying declarations which were recorded by both, PW-6 and PW-7. He has stated that Suvarna was admitted to hospital at about 1.00 a.m. on 20.6.2002 soon after which her statement was recorded by the A.S.I. This witness has mentioned that he examined Suvarna before the A.S.I. recorded the statement and found her to be conscious and able to have her statement recorded. He examined her again at the instance of PW-7 before the latter recorded her statement. This witness has categorically denied that Suvarna was tutored by her parents or that anybody else was present in the room when her statements were recorded by PW-6 and PW-7.

7. PW-1 who has performed the post-mortem examination on both, Suvarna and Nagnath, has stated that they died due to shock on account of the burns sustained by them.

Suvarna sustained 98% burn injuries while Nagnath suffered 65% burn injuries.

8. We have perused the evidence on record and the judgment in the present appeal. We have scrutinized and assessed the evidence and other record before the trial Court independently in order to ensure that no injustice is done to the accused. We find that the conclusions reached by the trial Court are correct. There is no doubt that the accused is guilty of murdering his wife.

9. The evidence on record justifies the conviction and sentence imposed by the Sessions Court on the accused. We, therefore, have no hesitation in upholding the view taken by the Trial Court.

10. In the result, the appeal is dismissed. The conviction and sentence imposed on the accused by the Trial Court is maintained.

(D.G. DESHPANDE, J.)

(SMT. NISHITA MHATRE, J.)